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IN THE

Supreme Court of the United States

October Term, 1951.

No. 414.

SAMUEL MANDEL, Administrator of the Estate of ROBERT WILLIE DILLEHAY, JR., Deceased,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.

International, 216 Chestnut St., Phila. 6, Pa.

INDEX TO BRIEF.

	Page
THE OPINIONS OF THE COURTS BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	4
SPECIFICATION OF ERRORS	6
SUMMARY OF ARGUMENT	7
ARGUMENT	13
The Federal Employees' Compensation Act Was Not an Exclusive Remedy Prior to the 1949 Amendment	13
The Amendment of 1949 Was Intended to Make the Compensation Act an Exclusive Remedy for All Federal Employees Except Seamen	15
The Decisions Overwhelmingly Support the View That Federally Employed Seamen Are Entitled to the Benefits Under the Suits in Admiralty Act Without Being Barred by the Compensation Act	19
The Compensation Act Does Not Provide a More Enlightened Form of Remedy Than That Under the Maritime Law	26
The Inclusion of Federally Employed Seamen Within the Public Vessels Act Does Not Discriminate Against Military Personnel	31
It Is Not Contrary to the Public Interest to Include Federally Employed Seamen Within the Public Vessels Act	32
CONCLUSION	35

TABLE OF CASES CITED.

	Page
Axtell v. United States, 286 Fed. 165 (E. D. N. Y., 1922)	14
Brady v. Roosevelt S. S. Co., 317 U. S. 575 (1943)	14, 20
Brauner v. United States, 192 F. (2d) 987	34
Brooks v. United States, 337 U. S. 49	13, 32
Calmar v. Taylor, 303 U. S. 527	30
Carlson v. United States, 1934 A. M. C. 841, 71 F. (2d) 117 (5 Cir., 1934)	14
Cardillo v. Liberty Mutual, 302 U. S. 469	29
Dahn v. Davis, 258 U. S. 421	13, 20
Desrochers v. United States, 105 F. (2d) 919 (2 Cir., 1939)	14
Hansen v. United States, 1926 A. M. C., 286 12 F. (2d) 321 (S. D. Ga. 1926)	14
Helmke v. United States, 8 F. Supp., 521, 1934 A. M. C. 1592 (E. D. La., 1934)	14
Howarth v. U. S. S. B. E. F. C., 1928 A. M. C. 397, 24 F. (2d) 374 (2 Cir., 1928)	14
Ives v. United States, 1932 A. M. C. 783, 58 F. (2d) 201 (2 Cir., 1932)	14
Johanson v. United States, 191 F. (2d) 162	19, 26, 33
Johnson v. United States, 1935 A. M. C. 165, 74 F. (2d) 703 (2 Cir., 1935)	14
Johnson v. United States, 186 F. (2d) 120	23
Maloney v. United States, 7 F. Supp. 14, 1928 A. M. C. 288 (S. D. N. Y. 1927)	14
Morris v. United States, 3 F. (2d) 588 (2 Cir., 1924)	14
Rodriguez v. U. S., 1951 A. M. C. 512	33
Smith v. United States, 1938 A. M. C. 977, 96 F. (2d) 976 (5 Cir., 1938)	14
Stewart v. United States, 25 F. (2d) 869, 1928 A. M. C. 943 (E. D. La., 1928)	14

TABLE OF CASES CITED (Continued).

	Page
Stratton v. United States, 1934 A. M. C., 1161, 8 F. Supp. 429 (S. D. N. Y., 1934)	14
Unica v. United States, 287 Fed. 177, 1923 A. M. C. 455 (S. D. Ala. 1923)	14
United States v. Loyola, 161 F. (2d) 126	22
United States v. Marine, 155 F. 2d 456	8, 20, 22
U. S. S. B. E. F. C. v. Greenwald, 1927 A. M. C. 308, 16 F. (2d) 948 (2 Cir., 1927)	14
United States Shipping Board Emergency Fleet Corp v. O'Shea, 5 F. (2d) 123, 1925 A. M. C. 959 (App. D. C., 1925)	14
Zinnel v. U. S. S. B. E. F. C., 1926 A. M. C. 632, 10 F. (2d) 47 (2 Cir., 1925)	14

TABLE OF STATUTES AND AUTHORITIES CITED.

Page

Congressional Record, p. 13608—Senate, September 30, 1949 16

Professor Kenneth C. Davis, Columbia Law Review, Vol. 29, No. 6 29

Federal Employees' Compensation Act (1916), 5 U. S. C., Sec. 751 et seq. ..2, 3, 6, 7, 8, 13, 15, 19, 21, 23, 26, 35

Federal Control Act, 40 Stat. at L. 451, Chap. 25 13

Samuel B. Horovitz, 3 NACCA Law Journal, "The Litigious Phrase: arising out of employment" 28

H. R. 3191 ..... 8, 15

Jones Act (46 U. S. C. 688) 28

"Law Reform (personal injuries) Act" 1948 (11 & 12 Geo. VI, c. 41) 30

Public Vessels Act, (1925) 46 U. S. C., Chap. 22: Sec. 781 et seq. 1, 4, 5, 6, 10, 11, 12, 31, 32, 34

Suits in Admiralty Act (1920), 46 U. S. C., Chap. 20, Sec. 741 et seq. 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, 21, 23, 26, 34

28 U. S. C. 1254 (1) 1

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No. 414.

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Petitioner

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

THE OPINIONS OF THE COURTS BELOW.

Two opinions were filed by the District Court for the Eastern District of Pennsylvania; one by Judge McGranery on November 21st, 1947, reported in 74 F. Supp. 754 (R. 23a), and the other by Judge Kirkpatrick on August 14th, 1950, reported in 93 F. Supp. 692 (R. 61a).

The opinion of the United States Court of Appeals for the Third Circuit was filed on August 16th, 1951, and is reported in 191 F. 2d 164 (R. 100).

JURISDICTION.

This proceeding was brought under the provisions of the Public Vessels Act (46 U. S. C. 781), and the Suits in Admiralty Act (46 U. S. C. 741), claiming damages for wrongful death.

The judgment of the Court of Appeals was entered on August 16th, 1951. The petition for a writ of certiorari was filed on November 6th, 1951, and it was granted on January 2nd, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Where a federally employed merchant seaman is killed in the course of his employment aboard a government-owned tugboat in the Army Transport Service, which was commanded by a civilian Captain and manned by a crew of merchant seamen, the question presented is:

Whether the widow of the deceased seaman may bring an action for damages under the Public Vessels Act or the Suits in Admiralty Act, or whether the widow is limited to the remedy under the Federal Employees' Compensation Act.

STATUTES INVOLVED.

Federal Employees' Compensation Act (1916), 5 U. S. C., Sec. 751:

"The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the wilful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death".

Federal Employees' Compensation Act Amendment of 1949, 5 U. S. C.
Sec. 757 (b):

"The liability of the United States or any of its instrumentalities under sections 751-756, 757-791, and 793 of this title or any extension thereof with respect to the injury or death of an employee shall be exclusive, and in place of all other liability of the United States or such instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and anyone otherwise entitled to recover damages from the United States or such instru-

mentality, on account of such injury or death, in any direct judicial proceedings in a civil action or in admiralty, or by proceedings, whether administrative or judicial, under any other workmen's compensation law or under any Federal tort liability statute: *Provided, however, That this subsection shall not apply to a master or a member of the crew of any vessel".* (Italics added.)

SEC. 791-4 (b):

"Nothing contained in this Act shall be construed to affect any maritime rights and remedies of a master or member of the crew of any vessel". (Italics added.)

Suits in Admiralty Act (1920), 46 U. S. C., Chap. 20.

SEC. 741:

"No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions . . ."

SEC. 742:

"In cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against any corporation mentioned in section 741 of this title, as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation. . . ."

Public Vessels Act (1925), 46 U. S. C., Chap. 22.

SEC. 781:

"A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920".

SEC. 782:

". . . Such suits shall be subject to and proceed in accordance with the provisions of Chapter 20 [Suits in Admiralty Act] of this title or any amendment thereof, insofar as the same are not inconsistent herewith . . ."

STATEMENT OF THE CASE.

This action was brought under the Public Vessels Act and the Suits in Admiralty Act to recover damages for the wrongful death of a merchant seaman, in behalf of the widow.

The alleged facts giving rise to the cause of action are briefly as follows:

The tugboat "L. T. 221" was a government-owned vessel in the Army Transport Service. It was commanded by a civilian Captain and manned by a crew of merchant seamen, including the decedent who was the vessel's third assistant engineer.

On October 14, 1944, the vessel was proceeding into the Harbor of Cagliardi, Sardinia, when it suffered a violent explosion which was allegedly due either to defective boilers or to the fact that it was negligently navigated into a mine field (R. 4a). The decedent lost his life in that disaster.

Before answering to the merits, the Government moved to dismiss the libel upon the ground that the widow was limited to the remedy under the Federal Employees' Com-

pensation Act. That motion was overruled by District Judge McGranery who held that the widow had an election either to accept compensation or to proceed with her tort action under the Suits in Admiralty Act or the Public Vessels Act (R. 23a).

After an answer to the merits was filed, libellant, in preparation for trial, filed a motion for the production of certain statements of witnesses. The War Department had ruled that the information requested was not secret or confidential and had approved disclosure (R. 92a). District Judge Kirkpatrick held that good cause had been shown and ordered disclosure of the documents (R. 63a). The Government then filed a claim of privilege and refused to comply with the Court's order upon the ground that production of the statement would be contrary to the public interest (R. 65a). The District Judge overruled the Government's claim of privilege, but the Government, nevertheless, refused to comply with the Court's order. The Court thereupon entered judgment against the Government and directed that the case proceed to trial solely on the question of damages (R. 98a).

The Government appealed from that judgment assigning as error, (a) the earlier ruling of District Judge McGranery holding that the widow had a choice of remedies, and, (b) the later Order of Judge Kirkpatrick overruling the Government's claim of privilege.

The Court of Appeals reversed the judgment of the District Court solely upon the ground that the Federal Employees' Compensation Act was the exclusive remedy available to the widow and that the libellant had no right of action under the Public Vessels Act. The Court of Appeals did not consider or decide the question of privilege, which was the basis for the entry of judgment.

The holding of the Court of Appeals is based upon three considerations:

(a) Since the Compensation Act did not contain an express provision making it an optional remedy, it must

be construed as an exclusive one. In support of this premise, the Court stated that compensation acts generally provide a more humane, adequate and fair method, and the natural inference with respect to the Federal Employees' Compensation Act is that it represents a more enlightened form of remedy for industrial accidents than the ordinary tort action for damages (R. 103-104);

(b) By making the Compensation Act the exclusive remedy, it will remove an element of unfairness in that to permit merchant seamen to recover damages under the Public Vessels Act, would be to discriminate in their favor against military personnel (R. 104-105);

(c) It is not in the public interest to have judicial review of questions of negligence in the conduct of military or semi-military operations (R. 105).

SPECIFICATION OF ERRORS.

The learned Court of Appeals for the Third Circuit erred in the following respects:

(1) In holding that the Court had no jurisdiction to entertain any suit for personal injury to or death of a civilian seaman in government employ, under the Suits in Admiralty Act or the Public Vessels Act;

(2) In holding that the sole and exclusive remedy for personal injury to or death of a civilian seaman in government employ is under the Federal Employees' Compensation Act;

(3) In failing to construe the relevant statutes in accordance with the plain language and rationale of the legislation and with the intention of Congress; and in relying upon mistaken and erroneous impressions, as that the Compensation Act provides a more enlightened form of remedy, that it discriminates in favor of merchant seamen against military personnel, and that it is not in the public interest to have judicial review of questions of negligence in the conduct of military or semi-military operations.

SUMMARY OF ARGUMENT.

The history of the Federal Employees' Compensation Act reveals that it has never been regarded as an exclusive remedy for any federal employees, and this is particularly so with respect to federally employed maritime seamen. From the time of its enactment in 1916, it has been specifically held many times that the Compensation Act does not bar suits for damages against the United States by federal employees under other statutes, such as the Federal Control Act of 1918, the Federal Tort Claims Act, the Suits in Admiralty Act and the Public Vessels Act. In its general application, the Compensation Act has been construed as an optional rather than an exclusive remedy.

The Suits in Admiralty Act was passed in 1920 under circumstances quite different from the ordinary case where the Government waives its sovereign immunity from law suits. Prior to that enactment, vessels which were government-owned were subject to attachment in rem proceedings just as were the vessels of private shipowners. Section 1 of the Suits in Admiralty Act was designed to abolish this right of attachment of government vessels. Section 2 of the Act substituted a suit in personam against the Government, in place of the rem action which was abolished, and the United States was made subject to suit under precisely the same circumstances as would impose liability upon private shipowners. The situation is thus different from the usual one where the Government sheds its sovereign armor and creates a liability where there was none before. Here, the seamen had a right of action before the Compensation Act, which was unaffected by that Act. The Suits in Admiralty Act changed that right into a personam action against the Government.

The clear language of the Suits in Admiralty Act encompasses the damage claims of seamen, and there is no suggestion or inference that it was made subject to the existing Federal Compensation Act. Had Congress in-

tended to exclude the seamen from the Act, or to impose any conditions upon their right to take advantage of the benefits under the Act, it is reasonable to assume that the Congress would have so stated in unmistakable terms. The fact that the Congress did not qualify the Act in any way as to exclude the seamen, is conclusive proof that it was not intended to make any distinction between the claims of seamen and any other claims which might be brought under the Suits in Admiralty Act. Indeed, so clear is the language of the Act, that the Government itself did not question the seamen's right to bring a damage action thereunder for about twenty-five years after the passage of that legislation. Numerous suits by federally employed seamen were allowed to proceed against the United States under the Suits in Admiralty Act, and the Federal Employees' Compensation Act was never advanced as a bar to those actions. It was not until 1946 that the Government first raised the question in the case of *United States v. Marine*, 155 F. 2d 456, in which case the Government's contention was flatly rejected. Thereafter the Government continued to raise the same question in other jurisdictions, but the Courts uniformly held that the Compensation Act did not bar an action by a federally employed seaman under the Suits in Admiralty Act, until the decisions of the two cases which are presently before this Court.

Further examination of the legislation confirms the view that Congress never intended to limit the seaman's rights under the Suits in Admiralty Act or the Public Vessels Act. In 1949 a Bill was introduced in Congress (H. R. 3191) generally liberalizing the Federal Employees' Compensation Act. Section 201 of that Bill was added to make the Compensation Act the exclusive remedy for all civilian federal employees in place of all other rights under any other statutes or laws. This was a significant recognition that the Federal Compensation Act, up to that time, was not an exclusive remedy as to any federal employee, let alone the merchant seamen.

As originally drafted, Section 201 of the Amendment of 1949 was broad enough to include federally employed seamen and it would have nullified all of their existing maritime rights. *This clause was changed in the Senate to make an exception of federally employed seamen and to preserve to them all of the rights which they enjoyed under the Maritime Law.* The Bill was enacted into law with that change.

By the 1949 Amendment, therefore, Congress confirmed the interpretation which had been placed on the original legislation, namely that federally employed seamen were entitled to the benefits of the Maritime Law under the Suits in Admiralty Act, and by that Amendment it was expressly provided in positive terms that those benefits of the Maritime Law should be preserved to all of these seamen.

Moreover, the Courts uniformly so interpreted the legislation from the adoption of the Suits in Admiralty Act in 1920, until 1951, when, in the two cases now before this Court, they departed from the settled rule. The reasoning of the Courts in the cases at bar fails to support the decisions.

The decision in the instant case was rested upon three grounds, the first of which is that the Compensation Act should be regarded as an exclusive remedy because it represents a more enlightened, humane and adequate form of remedy. This premise is unquestionably erroneous aside from the fact that it was not a proper basis for the Court to resist the clear mandate of the statute. Congressional Committees have, for many years, investigated this very point with a view toward enacting a compensation act for seamen, and it has been conclusively demonstrated in those hearings that the compensation acts do not begin to approach the remedies under the Maritime Law from the standpoint of liberality, adequacy or fairness.

The seamen's maritime right to maintenance and cure, which is not dependent upon fault or culpability, is itself a more substantial remedy than that afforded by the com-

pensation acts. It is broader in scope since it includes all illnesses and injuries which are manifest during the employment and need not be caused by the employment as is required under the compensation acts. In amount, the employer is required to pay the actual cost of maintenance which today has been fixed at $8.00 per day, while the compensation acts provide only a percentage of the earnings. The Maritime Law does not stop with the remedy for maintenance and cure, but it affords, in addition, a right of action for indemnity where the illness or injury is caused by the unseaworthiness of the vessel or its equipment, or by the negligence of the employer or his agents and employees.

In England, where the compensation system went into effect in 1897, the law has now been modified to allow the employee a right of action for damages, in addition to the remedy for compensation. Britain has thus followed the pattern of the Maritime Law in an effort to liberalize its system and to more fairly compensate the injured employee.

Congress has refused to enact a compensation act for seamen after a careful study of the problem. The Court below had no right to substitute its own judgment for that of the Congress in interpreting the federal legislation.

The second reason advanced by the Court below in support of its decision, is that to permit merchant seamen a remedy under the Public Vessels Act would, in effect, be discriminating against naval personnel. This reasoning is fundamentally unsound.

Congress has enacted much special legislation to cover military personnel, such as disability benefits, pensions, insurance provisions, extraordinary medical benefits, and many others, *none of which are applicable to merchant seamen.* It has enacted other separate legislation for the seamen. It was not the province of the Court below, under these circumstances, to construe the law differently from what Congress intended because of what the Court below felt were considerations of unfairness.

To carry out the reasoning of the Court below to its logical extreme, if an employee brought claim against his employer for overtime wages under the Fair Labor Standards Act, the claim would have to be denied because it would be unfair to the military forces fighting on some battle line who had no right to overtime compensation.

Congress alone is charged with the responsibility of determining and enacting appropriate legislation to govern its various subjects. It has done so in this field, and its wisdom in effecting the legislation under consideration may not be challenged by the judiciary.

The third and final reason relied upon by the Court below is that it is not in the public interest to have judicial review of questions of negligence in the conduct of military or semi-military operations. Here again the Court below was usurping the function of the legislative body.

Moreover, an examination of the cases brought under the Public Vessels Act and the Suits in Admiralty Act reveals that the liability is almost invariably predicated upon the unseaworthiness of the vessel or the negligence of a fellow servant. These cases do not involve situations where a battle commander's judgment is in issue, as the Court below assumed.

During the last war, practically all of the vessels were requisitioned by the Government and operated under General Agency Agreements. These vessels were manned and commanded by merchant seamen, although there was a complement of naval personnel aboard. These vessels proceeded in convoy under the command of the Navy and they carried war cargo and troops to the various battle fronts. They even participated in the Normandy invasion. In these situations, federally employed seamen were employed at the scene of the battle, and the dire consequences which the Court below envisioned, failed to materialize. The Government concedes that these federally employed seamen were and are entitled to sue the United States under the Suits in Admiralty Act. The same seamen who manned

these vessels for the War Shipping Administration also manned the vessels for the Army Transport Service. They were used interchangeably and the service in both was, from the practical standpoint, indistinguishable. If, as the Court below said, it was not in the public interest to afford seamen engaged in that service the right to take advantage of the benefits under the Suits in Admiralty Act, then it was just as necessary to extend the rule to War Shipping Administration seamen, as it was to those engaged in the Army Transport Service. Congress, however, made it perfectly clear that it did not consider it in the public interest to take away the maritime rights from the federally employed seamen. The fact that it has repeatedly rejected the attempts to place these seamen under the compensation acts, is ample proof that it did not consider it in the public interest to place these men under the Federal Employees' Compensation Act. The wisdom of that decision is not open to judicial review.

What has been said with regard to the Suits in Admiralty Act applies with equal force to the Public Vessels Act since, by Section 2 of the latter statute, all of the provisions of the Suits in Admiralty Act are incorporated into the Public Vessels Act.

ARGUMENT.

The Federal Employees' Compensation Act Was Not an Exclusive Remedy Prior to the 1949 Amendment.

Apart from the question as it relates to seamen, the Compensation Act, in its general application, has been regarded as an elective remedy rather than an exclusive one.

In *Dahn v. Davis,* 258 U. S. 421, a railway mail clerk in government employ was injured on a railroad operated by the Director General of Railroads. He brought suit for damages against the Director General under the Federal Control Act, 40 Stat. at L. 451, Chap. 25. The Government sought dismissal upon the ground that the mail clerk was limited to the remedy under the Federal Employees' Compensation Act. The Supreme Court held that the Compensation Act provided an elective remedy giving the employee a choice between the Compensation Act and a tort action for damages.

In *Brooks v. United States,* 337 U. S. 49, two army servicemen were struck by an army truck driven by a civilian employee of the Army. The Court held that the servicemen were entitled to bring an action for damages under the Tort Claims Act, in addition to all other rights enjoyed by military personnel. In examining all of the relevant legislation, the Court pointed out that the Federal Employees' Compensation Act is elective and not exclusive as the Government contends.

Insofar as seamen are concerned, from the time the Suits in Admiralty Act was adopted, it was taken for granted by all parties that federally employed seamen were entitled to the benefits of that Act without being limited by the Compensation Act. The history of the legislation proves that the Government shared this view. Numerous suits by seamen injured on government vessels were instituted every year, commencing in 1920, and they proceeded without any objection or discussion regarding the effect of

the Compensation Act.[1] In the case of *Brady v. Roosevelt S. S. Co.*, 317 U. S. 575 (1943), the defendant took the position that the Suits in Admiralty Act provided the only remedy for injuries to seamen on government vessels, to the exclusion of any right of action against a private operator of the vessel. There was no suggestion that the Compensation Act had any bearing whatever on the proceedings. The Supreme Court stated in that case (p. 577):

> " and we may assume that the petitioner could have sued either the United States or the Commission under the Suits in Admiralty Act."

Although the relevancy of the Compensation Act was not there considered, that expression significantly emphasizes the understanding, universally accepted by the Courts and the parties, including the Government itself, that the Suits in Admiralty Act provided a remedy for federally employed seamen against the Government. The fact that the Government did not raise the Compensation Act as a bar to the litigations is strong evidence of the Government's own understanding that the Compensation Act did not provide an exclusive remedy. This understanding, shared by the parties and the Courts, could only have originated from the legislation itself.

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1. Axtell v. United States, 286 Fed. 165 (E. D. N. Y., 1922); Unica v. United States, 287 Fed. 177, 1923 A. M. C. 455 (S. D. Ala. 1923); Morris v. United States, 3 F. (2d) 588 (2 Cir., 1924); United States Shipping Board Emergency Fleet Corp. v. O'Shea, 5 F. (2d) 123, 1925 A. M. C. 959 (App. D. C., 1925); Zinnel v. U. S. S. B. E. F. C., 1926 A. M. C. 632, 10 F. (2d) 47 (2 Cir., 1925); Hansen v. United States, 1926 A. M. C., 286 12 F. (2d) 321 (S. D. Ga. 1926); Maloney v. United States, 7 F. Supp. 14, 1928 A. M. C. 288 (S. D. N. Y. 1927); U. S. S. B. E. F. C. v. Greenwald, 1927 A. M. C. 308, 16 F. (2d) 948 (2 Cir., 1927); Stewart v. United States, 25 F. (2d) 869, 1928 A. M. C. 943 (E. D. La., 1928); Howarth v. U. S. S. B. E. F. C., 1928 A. M. C. 397, 24 F. (2d) 374 (2 Cir., 1928); Ives v. United States, 1932 A. M. C. 783, 58 F. (2d) 201 (2 Cir., 1932); Stratton v. United States, 1934 A. M. C., 1161, 8 F. Supp. 429 (S. D. N. Y., 1934); Helmke v. United States, 8 F. Supp., 521, 1934 A. M. C. 1592 (E. D. La., 1934); Carlson v. United States, 1934 A. M. C. 841, 71 F. (2d) 117 (5 Cir., 1934); Johnson v. United States, 1935 A. M. C. 165, 74 F. (2d) 703 (2 Cir., 1935); Smith v. United States, 1938 A. M. C. 977, 96 F. (2d) 976 (5 Cir., 1938); Desrochers v. United States, 105 F. (2d) 919 (2 Cir., 1939).

The Suits in Admiralty Act, which came four years after the Compensation Act, was designed to abolish one right of action and to create another in its place. Prior to that time, Government vessels could be arrested by a libel in rem in any case where a lien against the vessel existed. Seamen employed on Government vessels were thus able to obtain redress for their personal injuries by actions in rem against the offending vessels. Section 1 of the Suits in Admiralty Act abolished the right to arrest any vessel in which the Government had an interest. Section 2 of the Act substituted a remedy in personam against the United States and defined the limits within which it was intended to bind the Government. The same section provides that the Government may be sued in every case where, if the vessel had been privately owned, a suit could have been instituted against the private shipowner.

In the instant case, there is not the slightest doubt but that, if the vessel had been privately owned, a suit could have been instituted against the private owner. It follows that libellant has a right of action under the Suits in Admiralty Act.

The Amendment of 1949 Was Intended to Make the Compensation Act an Exclusive Remedy for All Federal Employees Except Seamen.

It was recognition of the fact that the Compensation Act was not an exclusive remedy which led the Government to introduce a Bill in Congress, (H. R. 3191) which, inter alia, attempted to make the Compensation Act the exclusive remedy for all federal employees, in place of all other rights against the United States. As originally drafted, the Act would have included civilian seamen and it would have nullified all of their existing rights under the Maritime Law. The seamen were not made aware of the effect of the Bill, and were not invited to the legislative hearings. The Bill passed the House but it was blocked in the Senate when

the seamen's unions entered a protest. The Bill was then referred back to the Senate Committee which, after further consideration, made a change in the Bill reserving to the seamen all of their maritime rights, and with this change, the Bill was adopted by both Houses of Congress.

The Report which was submitted by Senator Morse with the amendment to the Bill clearly explains the effect and purpose of the legislation as follows (p. 13608 Cong. Rec.—Senate, September 30, 1949):

> "Under existing law, Government-employed seamen have been accorded the right to assert their maritime rights against the United States under the Suits In Admiralty Act and Public Vessels Act, and, moreover, have been permitted an election to accept the benefits of the compensation in lieu of their maritime rights. The benefits to seamen under maritime law, which would be wiped out prospectively and to some extent retroactively by section 201 of the bill, are regarded as valuable rights by federally employed seamen, whose numbers exceed 16,000 at the present time. The representatives of maritime unions are now strongly urging, since the bill was placed on the Senate Calendar, that their right to sue the United States under maritime law be preserved and that they be kept in status quo. It would appear that none of the seamen's representatives were apprised of the implications of the bill insofar as it affects their maritime rights. Consequently none of the representatives of maritime labor appeared before the committees which considered the bill and upon a perusal of the hearings I find no evidence that the effect of the bill upon seamen was explored on the merits. I think this is particularly unfortunate, although undoubtedly inadvertent, in view of the fact that seamen for years have opposed exclusive coverage under workmen's compensation.
>
> "Because I think there is merit in their position, and because I feel they should not be deprived of bene-

fits they have enjoyed for many years without opportunity to have their arguments carefully considered by the appropriate committees of the Congress, *I am proposing these amendments which are intended, insofar far as possible, to preserve the rights of federally employed seamen under existing law to proceed against the United States apart from the Compensation Act. The purpose is likewise to preserve the status quo as to choice of remedies by seamen.*

"The first amendment, therefore, proposes to add the following proviso to section 7 (b) of the Federal Employees' Compensation Act, which subsection would be inserted in that act by section 201 of the bill: 'Provided, however, *That this subsection shall not apply to a master or a member of the crew of any vessel.*'

"By this proviso, it is intended that the special provision, as added to the Compensation Act by this bill, declaring the liability of the United States under that act to be exclusive, shall not apply to seamen employed by the United States. It is not intended that the right of federally employed seamen, as heretofore recognized by the courts, to maintain suits against the United States, shall be lessened by this bill. In short, the amendment is intended merely to preserve the status quo as to seamen. If the Congress should decide to go into this matter further at some future session, it could then do so without delaying the enactment of this urgently needed bill.

"I propose further that a new section, section 305, be added to the bill on page 39, between lines 17 and 18, as follows:

"'Seamen

Sec. 305. (a) *Nothing contained in this act shall be construed to affect the exclusion of certain seamen (as defined in the Act of March 24, 1943, chapter 26, 57 Stat. 45, as amended; 50 U. S. C. Appendix, sec 1291)*

from the terms of the Federal Employees' Compensation Act, as provided by such act of March 24, 1943, as amended.

"'(b) *Nothing contained in this act shall be construed to affect any maritime rights and remedies of a master or member of the crew of any vessel.*'"

. . . "Subsection (a) of the proposed section 305 is necessary because of the special status of seamen on vessels that were operated under the General Agency agreements with the War Shipping Administration, now succeeded by the Maritime Commission. By the so-called Clarification Act of March 24, 1943, as amended (50 U. S. C. Appendix, Sec. 1291), seamen on vessels so operated are excluded from coverage under the Federal Employees' Compensation Act, and it is not intended to supersede the Clarification Act by these amendments. While the House report on the bill (House Rept. No. 729, p. 13) states that it is not intended to repeal this specific statutory exclusion, doubts have been expressed as to whether the bill and the explanation in the House report would have the intended effect. Consequently, to resolve doubts on this score, subsection (a) of section 306 is proposed, in order to maintain the status quo under the Clarification Act.

"*Subsection (b) of the proposed new section 305 is intended out of caution, to reaffirm what is accomplished by the propsed amendment to section 201 of the bill, lest some other provision of the bill which, in some way not now foreseen, might be construed to take away any election of remedies that seamen might now have.* The new subsection would make clear that no provision of this amending act, as distinguished from the existing Compensation Act itself, shall be construed to affect any maritime rights or remedies of seamen. The purpose is to reserve to seamen whatever rights they now

have, or may be held to have, under maritime law, and to allay the fears that have been expressed that the amendments to the Compansation Act being made by this bill will be construed to negate or reduce any of the maritime rights and remedies of seamen."

To sum up, the 1949 Amendment to the Federal Employees Compensation Act demonstrates two things:

(a) that the Act in its original form was not an exclusive remedy with respect to any federal employees, and for that reason, it was necessary to enact the Amendment making the Act the sole and exclusive remedy;

(b) the Amendment recognized that federally employed seamen had, prior thereto, been entitled to the benefits of the Maritime Law, and the Amendment expressly excepted the seamen from the provision making the Compensation Act the exclusive remedy and preserved to those seamen all their Maritime rights.

The Decisions Overwhelmingly Support the View That Federally Employed Seamen Are Entitled to the Benefits Under the Suits in Admiralty Act Without Being Barred by the Compensation Act.

From the time of the adoption of the Suits in Admiralty Act in 1920, until 1946, numerous cases against the Government were brought by federally employed seamen without any objection from the Government. Thereafter, until 1951, the Courts uniformly held that the Compensation Act did not bar the seamen's actions under the Suits in Admiralty Act. The instant case and the *Johansen* case, both of which are now before this Court for review, are the first departure from the established rule.

During the first period referred to, it was apparent that the Government did not make any objection to the tort actions because of the clear and unambiguous language of the Suits in Admiralty Act. It may be assumed that the

Government was best aware of the legislative intent at the time the statute was enacted, and, had there been any doubt on this score, the Government would have asserted itself in those earlier cases covering the twenty-five year period, as it did in cases involving other federal employees. *Dahn v. Davis, supra,* for example, decided in 1922, demonstrates that the Government was alert to the defense that the Compensation Act might be a bar to a federal employee's tort action.

The fact that the Government failed to assert the same defense in the early stages after the passage of the Suits in Admiralty Act, and when the purpose of the legislation was most clearly in mind, leads to the conclusion that the Government well understood that the legislation was intended to include federally employed seamen as its intended beneficiaries.

The Supreme Court in *Brady v. Roosevelt SS Co., supra,* reached the same conclusion without any discussion of the Compensation Act. It is difficult to imagine that so fundamental an issue, which affected the very jurisdiction of the court, would have escaped the notice of the parties and the Court, if it were not for the fact that the legislation was well understood to create a tort action in favor of the seamen.

It was not until the case of *United States v. Marine,* 155 F. (2d) 456 decided in 1946, that the United States first advanced the contention that the Compensation Act was the exclusive remedy. In that case a customs inspector was injured on board a vessel owned and operated by the United States and he brought an action against the Government under the Suits in Admiralty Act. The United States defended on the ground that the Compensation Act provided the sole and exclusive remedy. The Court of Appeals for the Fourth Circuit in rejecting the Government's contention stated, (pp. 458-459):

> ". . . we have no manner of doubt from the plain words of the statute, considered in the light of the or-

dinary rules of statutory construction, that we are required to reach the same result. In substance, the provision in question is that whenever a proceeding in admiralty could be maintained against a privately owned and operated vessel, a libel in personam may be brought against the United States in the operation of its merchant fleet. We are not at liberty to alter or add to the plain language of the statute to effect a purpose which does not appear on its face. There is certainly no suggestion in this language, or in any other language of the Suits in Admiralty Act, which implies that the right is limited to persons outside the provisions of the Employees' Compensation Act, *and it is a fair inference that if Congress had intended that result it would have said so in unmistakable terms. The fact, of course, is that the inference is directly the other way.*" (Emphasis supplied.)

The Court then points out that the seaman is not barred from the remedy under the Suits in Admiralty Act unless he had made an election to accept the benefits under the Compensation Act, as follows (p. 459):

"What we have shown as to a lack of any reservation of immunity in the Suits in Admiralty Act, applicable in the circumstances of this case, impels the conclusion that there is nothing in the Act which expressly or impliedly excludes a Government employee from filing a libel under its terms. And in the same degree it is equally true that there is nothing in the Federal Employees Compensation Act which directly or indirectly would bar the right. The only applicability of the Compensation Act in a case like this occurs when the employee—as in the Brady case . . . has 'made an election' to avail of its benefits. Appellee, having elected to sue under the Suits in Admiralty Act, now has no claim under the Compensation Act . . . ."

In that case, the Government, in support of its contention, relied on three cases involving naval personnel where claims under the Public Vessels Act had been rejected specifically because of their status as military personnel. The Court of Appeals in the *Marine* case, distinguished those cases as follows (p. 460):

> "Nor do we think the Public Vessels Act affects the question. The decisions holding that an officer or enlisted man in the Navy may not avail of the Act in suits against a Government public vessel are placed largely upon the ground that *it would be contrary to the long standing policy of the United States with respect to the personnel of its Naval forces.* See Dobson v. United States, 2 Cir., 27 F. 2d 807; Bradey v. United States, 2 Cir., 151 F. 2d 742. *It is apparent that these cases are wholly inapplicable to the facts in the present case.*" (Italics added.)

The Ninth Circuit Court of Appeals reached the same conclusion in *United States v. Loyola,* 161 F. (2d) 126, decided in 1947. That case involved a claim by a federally employed seaman for maintenance and cure in connection with an illness which he suffered while in the service of a tugboat operated by the United States Army Transport Service. After reviewing all of the pertinent decisions, the Court held (p. 127):

> "Under the Suits in Admiralty Act of 1920, 46 U. S. C. A. Sec. 741 et seq., we have held that 'the United States in the operation of its merchant vessels' is liable for the relief of a seaman for his maintenance and cure. McInnis v. United States, 9 Cir., 152 F. 2d 387. In reaching the conclusion that the sovereign has here yielded its immunity for suit, we follow the decision of the Canadian Aviator case, 324 U. S. 215, 65 S. Ct. 643 that the broad language of the Public Vessels Act 'was deliberate and is not to be thwarted by

an unduly restrictive interpretation.' Our interpretation is also supported by the long established rule that legislation affecting a seaman's injuries and maintenance and cure is to be construed liberally in the seaman's favor. Jamison v. Encarnacion, 281 U. S. 635, 640, 50 S. Ct. 440, 74 L. Ed. 1082; Aguilar v. Standard Oil Co., 318 U. S. 724, 729, 63 S. Ct. 930, 87 L. Ed. 1107; Cortes v. Baltimore Insular Line, 287 U. S. 367, 375, 53 S. Ct. 173, 87 L. Ed. 368."

Thus, prior to the Amendment of 1949, there was complete unanimity of decisions to the effect that federally employed seamen were entitled to benefits under the Suits in Admiralty Act and were not barred by the Compensation Act.

After the 1949 Amendment, despite the fact that it expressly reserved to federally employed seamen their maritime rights, the Government continued to advance the same contention as before, and the question was again tested in the Fourth Circuit in the case of *Johnson v. United States*, 186 F. (2d) 120. There, a federally employed seaman was engaged as a deckhand on a United States patrol boat and was injured while on duty, due to the negligence of a superior officer. Suit was brought under the provisions of the Public Vessels Act and the Government contended there, as here, that the injured seaman was limited to the provisions of the Compensation Act. In a very able and learned opinion by Circuit Judge Soper, the Court, after a careful analysis of the subject matter, again rejected the Government's contentions, stating (p. 123):

"We are impressed with the liberal construction accorded the Public Vessels Act in Canadian Aviator, Ltd. v. U. S., 324 U. S. 215, 65 S. Ct. 639, 89 L. Ed. 901, where the Supreme Court held that the right accorded to an injured party by the statute to recover damages caused by a public vessel of the United States should not, in frustration of the liberal intent of Con-

gress, be narrowly construed to restrict the recovery to damages caused by the physical instrumentality of the vessel but should also embrace damages caused by the negligence of its operators. Again in American Stevedores v. Porello, 330 U. S. 446, 67 S. Ct. 847, 91 L. Ed. 1011, notwithstanding some uncertainty in the legislative history, the court held that the recoverable damages were not limited to damages to property but included damages to persons as well."

The Court then examined the legislative history and pointed out (pp. 123-124):

"We find nothing in this history to support the 'government's argument' but it is further said that Congress recognized that compensation is the only remedy open to seamen on public vessels by the passage of the War Shipping Administration (Clarification) Act of 1943, 50 U. S. C. A. Appendix Sec. 1291. That Act gave merchant seamen employed by the War Shipping Administration all the rights under law applicable to seamen on privately owned vessels and provided that they should not be considered as employees of the United States for the purposes of the Compensation Act; and further provided that the claims of such seamen should be enforced pursuant to the provisions of the Suits in Admiralty Act. It is contended that this statute was unnecessary if the right of seamen to sue under the Suits in Admiralty Act already existed. That right, however, had not then been adjudicated and it is a safe assumption that the Act was passed to make clear and beyond controversy that seamen on government merchant vessels, who were exposed to great risks during the war, should have the same privileges as seamen on privately owned ships, and would not be confined to the amount of damages fixed by the Compensation Act. The intention of Congress to exclude civilian seamen on government vessels from the broad terms

of the Public Vessels Act cannot be derived from this course of legislation."

The Court then considers the effect of the 1949 Amendment (p. 124):

"In 1949 Congress passed an amendment to the Federal Employees' Compensation Act for the obvious purpose of confining the liability of the United States for injury or death of an employee to the compensation provided by the Statute. See Sections 201 (b), 303 (g) and 305 (b) of the Act, approved October 14, 1949, Ch. 691, U. S. Cong. Serv., 81 Cong. 1st Sess. 866, et seq., 5 U. S. C. A. Secs. 757, 791-4. This enactment put an end to the option found to exist in the decision of this court in U. S. vs. Marine, supra. But Section 201 (b) was expressly limited during the progress of the bill through the Senate by a provision that it should not apply to a master or a member of the crew of any vessel; and in the debate on the floor the purpose of the limitation was stated to be to preserve the rights of seamen and to leave them in exactly the position in which they then were. 90 Cong. Rec. 13874-5. The Clarification Act had already provided that seamen employed by the War Shipping Administration should not be considered as employees of the United States for the purpose of the Compensation Act; but the Amendment of 1949 was not limited to such seamen but applied to the members of the crew of any vessel. See Militano v. U. S., 2 Cir., 156 F. 2d 599. This enactment is relevant to the present discussion, if at all, in that it indicates the same purpose disclosed in the earlier statutes to enlarge rather than restrict the rights of seamen to recover for personal injuries from the United States. The legislative history of the Public Vessels Act which is set out in Canadian Aviators Ltd., v. U. S., 324 U. S. 215, 218, 65 S. Ct. 639, 89 L. Ed. 901, and in American Stevedores v. Porello, 330 U. S. 446, 450, 67 S. Ct. 847,

91 L. Ed. 1011, discloses the same general purpose. In our opinion the government's position is not supported by the circumstances under which the foregoing statutes were enacted."

Thus, up to the very moment that the two decisions now before this Court were handed down, there was complete uniformity in the interpretation of the law. In the earlier cases for the first twenty-five years, after the enactment of the Suits in Admiralty Act, the Compensation Act was never raised as a bar to the enforcement of the seamen's maritime rights, and the parties and the Courts concluded from the clear terms of the legislation that these seamen were entitled to the benefit of the maritime laws under the Suits in Admiralty Act. The reasoning of the Courts in the later cases from 1946 to 1950 where the question was squarely raised, clearly sustains the interpretation adopted in the earlier decisions. The decisions in the *Johansen* case, and in the case at bar, are the first to depart from the established interpretation of the statutes. That departure appears to be grounded upon considerations which the lower Courts defined as matter of public policy.

Aside from the soundness or unsoundness of those considerations, it must be recognized that such considerations, where the Congressional intent is clear, are an invasion of the legislative functions. A review of the considerations relied upon by the Court below reveals that they are erroneous in substance, apart from the fact they are properly matters for the Congress rather than the judiciary.

The Compensation Act Does Not Provide a More Enlightened Form of Remedy Than That Under the Maritime Law.

The Court below adopted the view that compensation acts are generally "more humane, fair and adequate and a more enlightened form of remedy." This conclusion was drawn not as a result of an independent, comprehensive

study, but rather it was an assumption based on a commonly accepted but erroneous notion.

The system of Workmen's Compensation was brought into play because of the difficulty in establishing a claim for personal injuries under the old Common Law. Under that law, the employer was able to successfully resist the claims for personal injuries by means of the affirmative defenses such as the fellow servants rule, voluntary assumption of risk and contributory negligence.

Under the Workmen's Compensation system, an injury is compensable irrespective of negligence so long as it arises out of the employment. The system was also intended to dispense with litigation and afford the injured employee prompt payments without expense incident to litigation.

As the compensation system was put into effect and subjected to the test of experience, it became apparent that the compensation laws did not measure up to the panacea envisioned by the employees. In place of the old affirmative defenses, the employers now raised new defenses which served to defeat a very high proportion of the claims, and to reduce in amount an even greater percentage. Moreover, in those cases, where the employee was successful in obtaining an award, he found it completely insufficient to sustain himself or his family in his daily life, let alone to adequately compensate him for the injuries suffered.

Accordingly, the position of the employees and the employers changed completely. The employees, in recent years, have been seeking to escape from the system, while the employers have bent every effort to expand it.

The Railroad Brotherhoods have successfully resisted persistent attempts of the Railroads to extend the compensation acts into that field. The railway employees have found that the Common Law remedy, with some modification, provides an infinitely better and more equitable form of relief. By abolishing the affirmative defenses under the Common Law, these employees now enjoy a remedy which more nearly compensates them for the losses and injuries

suffered. While an occasional claim might be defeated, it is the exception rather than the rule. Taking into consideration the out-of-court settlements, along with court verdicts, the percentage of unpaid claims in this field is infinitesimally small when compared to the total number.

The seamen likewise have vigorously opposed being included within the compensation laws. This group of employees has the benefit of the original maritime law, and the Acts relating to railway employees, which have been incorporated into the Maritime Law by the Jones Act (46 U. S. C. 688). These remedies by far exceed the system of Workmen's Compensation as a practical, equitable and common sense remedy.

It is significant that the shipowners have, for many years past, been attempting to impose a system of compulsory compensation upon seamen and have from time to time caused Bills to be introduced into the Congress to effect that result. Congressional hearings upon those Bills were attended by representatives of all parties in interest. All of the seamen's unions, both A. F. of L. and C. I. O. representing licensed, as well as unlicensed personnel, appeared and testified in no uncertain terms that they did not want to surrender their rights under the Maritime Law for the benefits which might accrue under a compensation act. Congress, after a careful study of the problem, declined to enact a compensation law as substitute for the existing remedies.

Workmen's compensation acts are not a system of insurance and they do not provide a "sure" remedy, as has been represented by the proponents of that legislation. It did not take employers very long after the enactment of the compensation acts, to find defenses which have been just as effective as the old affirmative defenses under the Common Law.[2] Among these defenses, is the requirement that the injury "arise out of the employment." This

2 See Article by Samuel B. Horovitz, 3 NACCA Law Journal, "The Litigious Phrase: arising out of employment."

phrase has been characterized by the late Mr. Justice Murphy in *Cardillo v. Liberty Mutual,* 302 U. S. 469, as "deceptively simple and litigiously prolific".

The employers resist the compensation claims just as vigorously and as often as they did the personal injury claims. In a personal injury claim, once the employee obtains an award, he receives full payment for his injuries. In the compensation system, however, the employee's troubles are not over even after he obtains his award. For the employer regularly thereafter files periodic petitions to terminate or reduce the award. This means that the employee, in order to hold on to his award, meager though it be, must retain medical experts and counsel to resist the employer's efforts.

Professor Kenneth C. Davis, in an article in the Columbia Law Review, Vol. No. 6, stated that "the thousands upon thousands of reported cases on detailed questions of workmen's compensation law, are conclusive evidence of the expense and waste resulting from employer resistance of claims."

The contention that the compensation acts, therefore, reduce litigation and provide speedy compensation, without the aid of attorneys, is a most erroneous and unwarranted one. The very inadequate award which is granted to the employee in the first instance, is many times won only after a difficult battle, and the employee must be prepared to resist the constant thrusts of the employer to break down that award.

Frequently, the employee's financial inability to procure professional services, legal and medical, to offset those offered on behalf of the employer, adversely affect the claims.

As a direct consequence of the compensation acts, the standard of living of the injured employees and their families has been very sharply reduced and they frequently become burdens on the community, even where the employee

receives the full amount allowable under the compensation acts.

Contrast between the compensation system and that under the Maritime Law, conclusively demonstrates the fact that it is the Maritime Law and not the compensation acts, which provide the humane and enlightened form of remedy.

It may be useful to briefly examine the specific remedies under the respective systems. When a seaman is injured, or he falls ill in the service of the vessel, he becomes entitled, irrespective of any negligence or culpability, to maintenance and cure, in addition to his other remedies. This right alone exceeds anything that the compensation acts have to offer. He is entitled to maintenance when he is not confined in the hospital at a rate which has now been fixed at $8.00 per day, for the full period that he can be benefited by medical care and attention, in addition to the full cost of medical care. The right to maintenance and cure arises in any case where injury merely manifests itself while the seaman is in the service of the vessel. *Calmar v. Taylor*; 303 U. S. 527. Under the compensation system, the injury or illness must be caused by the employment. The basic philosophy underlying the maritime rights is thus far more humane and liberal, as well as more practical in its application than the Compensation Act.

But the maritime laws do not stop with maintenance and cure. If the injury or illness be due to the unseaworthiness of the vessel or its equipment, or to any negligence of the employer or his agents and employees, then the injured employee has a remedy for indemnity damages in addition to his right to maintenance and cure. This is, indeed, a truly enlightened form of remedy and one which might well serve as a pattern for general application.

In England, the compensation system, which has been in effect since 1897, has now been abolished and a broader scheme substituted in its place, in the form of "Law Reform (personal injuries) Act" 1948 (11 & 12 Geo. VI, c. 41).

The latter statute amended the British law and gives to the injured employee the right to recover damages in addition to the right to recover at least one-half of the benefits under the compensation laws. This type of legislation more nearly approaches the remedy now existing under the Maritime Law, and it is the best evidence to show that experience has proven the inadequacy of the compensation system and the efficacy of the Maritime Law.

To say, under these circumstances, that the existing compensation acts provide a more humane or enlightened remedy than that under the Maritime Law, is completely to ignore reality and the test of experience. Britain has found that the compensation acts have turned the clock back on progress and practical necessity. The English have, accordingly, restored the remedy which has been built up from the Common Law, to meet changing conditions and the ever growing needs of the community. That change now follows the draftsmanship of our own law as applicable to maritime employees. We would be extremely myopic if we failed to recognize the wholesome character of our maritime doctrines and abolished them in favor of a system which has utterly failed of its objective. If any change is made, it should be to enlarge the remedies presently enjoyed, and not to curtail them.

The Inclusion of Federally Employed Seamen Within the Public Vessels Act Does Not Discriminate Against Military Personnel.

The rationale of the contention of the Court below, is that military personnel cannot sue the Government for damages, on account of injuries sustained in the course of duty, and it would therefore be discriminating against these men if civilian seamen were permitted to recover damages for injuries sustained in the course of their employment. That reasoning is fundamentally unsound.

Congress has enacted, from time to time, special legislation to cover military personnel, of which only they may

have the benefit. These benefits include pensions, disability benefits, insurance provisions, educational and vocational training benefits, extraordinary medical benefits, preferences in civil service jobs, unemployment allowances and many others.

Congress did not extend these benefits to federally employed seamen. The latter enjoy entirely different benefits as already indicated. Once Congress has legislated, it is not within the province of the Judiciary to check into the fairness or unfairness of the legislation, or to determine whether the remedy in one case is proportionate to that in the other. By analogy to the reasoning of the Court below, a claim for overtime wages under the Fair Labor Standards Act might well be rejected because the military men fighting on the battle line are not entitled to overtime. Such a ruling would be obviously absurd, yet it would be the logical result of the reasoning of the Court below.

Congress has made provision for each group of personnel in a manner that it considered appropriate and its judgment is not open to judicial review.

It Is Not Contrary to the Public Interest to Include Federally Employed Seamen Within the Public Vessels Act.

The Court below reasoned that it is not in the public interest to have judicial review of questions of negligence in the conduct of military or semi-military operations. In reaching this conclusion, the Court assumed a hypothetical set of facts involving a military commander's judgment on the field of battle. In so doing, the Court failed to exercise the proper perspective and its approach to the problem was erroneous.

These cases do not involve a battle commander's judgment. When that situation arises, if ever, it will be time enough to meet it then as this Court said in *Brooks v. United States, supra.*

The liability in all these cases is predicated on the unseaworthiness of the vessel, or the negligence of a fellow servant in connection with the vessel's operations. In the instant case, which is itself an extreme one, the liability is based upon the action of the civilian Captain in negligently navigating the vessel into a known mine field. All of the information regarding that disaster has been officially approved for disclosure. There is no battle commander's judgment involved. It is simply a question of whether the Captain was negligent in navigating the vessel into a known mine field.

In the *Johansen* case, which is also before this Court on certiorari, the seaman based his claim for damages on the alleged negligence of a fellow employee in dropping a piece of timber upon him from above. In *Rodriguez v. U. S.*, 1951 A. M. C. 512, the seaman was injured while removing the guard from the blower of one of the boilers, through the negligence of the engineer on watch, *while the vessel was engaged in dredging the peaceful waters of the Delaware River*. The latter case represents the typical situation presented in most of these cases. In none of these cases is there involved a military commander's judgment on or related to the field of battle.

During the past war, the War Shipping Administration took over the operation of the entire merchant fleet and operated them under General Agency Agreements. The vessels were commanded and manned by merchant seamen. They were engaged in the transportation of men and material to all the various battle-fronts. They participated in the Normandy invasion. The Government concedes that the men who manned those vessels are entitled to the benefits of the Maritime Law without being affected by the Compensation Act. Congress was fully aware of all of the dangers inherent in all of these operations, and yet saw fit to safeguard the maritime rights of these men by special legislation.

The same seamen who manned the vessels for the War Shipping Administration were used interchangeably in the Army Transport Service. The nature of the service was the same in both. In principle, therefore, there was no reason to distinguish between seamen engaged by the Army Transport Service from those engaged by the War Shipping Administration.

Basically, it would appear that what really troubled the Court was the disclosure of information which might be of comfort to our enemies. This question is not and should not have been related to the question of whether the Public Vessels Act was the applicable remedy. That issue should have been directed at the second question in this case, namely, whether the Government's claim of privilege was correctly overruled. In connection with that issue it would have been appropriate for the Court to consider whether the national security was adversely affected or whether the disclosure of the information was otherwise contrary to the public interest.

It is of interest to note that the same type of objections were made in the case of *Brauner v. United States*, 192 F. (2d) 987, where the Government, as in the instant case, filed a claim of privilege and refused to produce certain documents in response to an order of Court. The Court of Appeals for the Third Circuit held that the Government's determination that the documents were privileged, was subject to judicial review with proper safeguards. That decision is hardly consistent in principle with the reasoning of the same Court in this case. But, however that may be, that issue is properly related to the Government's claim of privilege and it has nothing whatever to do with the interpretation of the legislation in question.

The Suits in Admiralty Act and the Public Vessels Act are couched in such clear and unambiguous language as to leave no doubt that they apply to federally employed seamen. No amount of tortured reasoning can read into the clear language of these Acts any qualification which would

make them subject to the Federal Employees' Compensation Act. The latter Act in its original form was never regarded as an exclusive remedy for any federal employees and particularly not for maritime employees. The 1949 Amendment was specifically drafted to make sure that the exclusivity provision, applicable generally to federal employees, *would not apply to federally employed seamen,* and that these employees would retain their maritime rights.

Congress has consistently refused to impose a compensation act on the seamen after a careful study of the problem and it enacted other legislation which it considered more appropriate. The effect of the decision of the Court below is to defeat the legislative intent and the legislative program relating to merchant seamen.

CONCLUSION.

For the foregoing reasons, the decision of the Court below should be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.